



Office of the Clerk
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UNITED STATES COURT of APPEALS for the NINTH CIRCUIT
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Amendments to the LOCAL RULES
for the Ninth Circuit Court of Appeals
effective, July 1, 2006

Changes are highlighted.

RULE	TITLE	New or Revised	PURPOSE OF AMENDMENT
Circuit Rule 3-3	Preliminary Injunction Appeals	Revised	To eliminate the existing presumption that appeals challenging a preliminary injunction will be decided without oral argument. Retention of subsections (b) and revised subsection (c) ensures that the cases will be accorded priority under 28 U.S.C. § 1657 and Circuit Rule 34-3(3).
Circuit Rule 4-1	Counsel in Criminal Appeals	Revised	To clarify and streamline the procedures for counsel in criminal appeals to withdraw. The amendment deletes the requirement that appointed counsel seeking to be relieved obtain written consent from the client; that requirement has proven to be burdensome to counsel and the client and unhelpful to the court. Counsel is, however, required to serve the client with any motion to withdraw, so the court can be assured the client is aware of the motion.
Circuit Rule 11-1.2	Notice of Reporter Default	Revised	To encourage informal resolution of transcript management issues and promote the district court's participation in resolving such issues. The time limit has been expanded to provide a reasonable opportunity to contact the district court staff.
Circuit Rule 25-4	Calendared Cases	Revised	To ensure timely transmittal of documents before oral argument so that the panel is aware of all relevant materials.

RULE	TITLE	New or Revised	PURPOSE OF AMENDMENT
Circuit Rule 27-1	Filing of Motions (1) Forms of Motions	Abrogated	Duplicates new language in Fed. R. Ap. P. 27(d)(1)(E).
Cir. Advisory Committee Note Rule 28-1	Briefs, Applicable Rules	Abrogated	Superseded by Fed. R. App. P. 28-1 and related amendments.
Circuit Rule 28-6	Citation of Supplemental Authorities	Revised	Cross-reference to Rule 25-4.
Circuit Rule 39-1.7	Opposition to Request for Attorney Fees	Revised	To promote internal uniformity of rules of practice by conforming the intervals to object to a request and reply to an objection with the periods for a response to a motion and a reply to a response. The language regarding service is eliminated as superfluous in view of Federal Rule of Appellate Procedure 25(b)'s global service requirement.
Circuit Rule 40-1	Format; Number of Copies	Revised	Appending the panel's decision would assist the court in evaluating petitions for rehearing.

CIRCUIT RULE 3-3

PRELIMINARY INJUNCTION APPEALS

(a) Every notice of appeal from an interlocutory order (i) granting, continuing, modifying, refusing or dissolving a preliminary injunction or (ii) refusing to dissolve or modify a preliminary injunction shall bear the caption "PRELIMINARY INJUNCTION APPEAL." Immediately upon filing, the notice of appeal must be forwarded by the district court clerk's office to the Court of Appeals clerk's office.

(b) Within 7 calendar days of filing a notice of appeal from an order specified in subparagraph (a), the parties shall arrange for expedited preparation by the district court reporter of all portions of the official transcript of oral proceedings in the district court which the parties desire to be included in the record on appeal. Within 28 days of the docketing in the district court of a notice of appeal from an order specified in subparagraph (a), the appellant shall file an opening brief and excerpts of record. Appellee's brief and any supplemental excerpts of record shall be filed within 28 days of service of appellant's opening brief. Appellant may file a brief in reply to appellee's brief within 14 days of service

of appellee's brief. (rev. 12-1-02)

(c) If a party files a motion to expedite the appeal or a motion to grant or stay the injunction pending appeal, the court, in resolving those motions, may order a schedule for briefing that differs from that described above. (Rev. 7-1-06)

Cross References: FRAP 8 and Circuit Rules 27-2, 27-3, Stay or Injunction Pending Appeal; FRAP 10 and Circuit Rules 10-2, 10-3, Record on Appeal; Circuit Rule 30-1, Excerpts of Record; FRAP 34 and Circuit Rules 34-3, Priority Cases. (Rev. 7-1-06)

CIRCUIT RULE 4-1

COUNSEL IN CRIMINAL APPEALS

This rule applies to appeals in categories of cases listed in 18 U.S.C. § 3006A.

(a) **Continuity of Representation on Appeal**

* * * *

(b) **Application for Indigent Status on Appeal**

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(c) **Withdrawal of Counsel After Filing the Notice of Appeal**

A motion to withdraw as counsel on appeal after the filing of the notice of appeal, where counsel is retained in a criminal case or appointed under the Criminal Justice Act, shall be filed with the Clerk of this court within twenty-one (21) days after the filing of the notice of appeal and shall be accompanied by a statement of reasons **and**:

(1) A substitution of counsel which indicates that new counsel has been retained to represent defendant; or

(2) A motion by retained counsel for leave to proceed *informa pauperis* and for appointment of counsel under the Criminal Justice Act, supported by a completed financial affidavit (CJA Form 23); (Rev. 7-1-06)

(3) A motion by appointed counsel to be relieved and for appointment of substitute counsel; (Rev. 7-1-06)

(4) A motion by defendant to proceed *pro se*; or

(5) An affidavit or signed statement from the defendant showing that the defendant has been advised of his or her rights with regard to the appeal and expressly stating that the defendant wishes to dismiss the appeal voluntarily.

Any motion filed pursuant to this section shall be served on defendant; the proof of service shall include defendant's current address. (Rev. 7-1-06)

(6) * * * *

- (d) **Motions for Leave to Proceed Pro Se in Direct Criminal Appeals**
* * *
- (e) **Post Appeal Proceedings**
* * *
- (f) **Counsel's Claim for Fees and Expenses**
* * *

Cross Reference: FRAP 42, Voluntary Dismissal, FRAP 46(c), Attorneys, Circuit Rule 27-9.1.

CIRCUIT RULE 11-1

FILING THE REPORTER'S TRANSCRIPT

11-1.1 Time for Filing the Reporter's Transcript

The reporter's transcript shall be filed in the district court within 30 days from the date the Transcript Designation/Ordering Form is filed with the district court, pursuant to the provisions of FRAP 11(b) and in accordance with the scheduling orders issued by the court for all appeals. Upon motion by a reporter, the Clerk of the Court of Appeals or a designated deputy clerk may grant a reasonable extension of time to file the transcript. The grant of an extension of time does not waive the mandatory fee reduction for the late delivery of transcripts unless such waiver is stated in the order.

11-1.2 Notice of Reporter Defaults

In the event the reporter fails to prepare the transcripts in accordance with the scheduling order issued by the court or within an extension of time granted by this court, appellant shall notify this court of the need to modify the briefing schedule. Such notice shall be filed within 21 days after the due date for filing of the transcripts. The notice shall indicate when the transcripts were designated, when financial arrangements were made or the voucher was prepared, the dates of hearings for which transcripts have not been prepared and the name of the reporter assigned to those hearings. Prior to submitting any notice, appellant shall contact the court reporter and court reporter supervisor in an effort to cause preparation of the transcripts. The notice shall be accompanied by an affidavit or declaration that describes the contacts appellant has made with the reporter and the supervisor. A copy of the notice and affidavit/declaration shall be served on the court reporter supervisor. (rev. 1/93, 7-1-2006)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 11-1.2

The filing of a motion for an extension of time by a reporter relieves appellant of the requirement to file the notification described in Rule 11-1.2 as to that reporter. (rev. 7/94)

CIRCUIT RULE 25-4

CALENDARED CASES

After a case has been scheduled for oral argument, has been argued, is under submission or has been decided, all papers submitted to the court for filing, including Federal Rule of Appellate Procedure 28(j) letters, must include the latest of the date of argument, submission or decision. If known, the names of the panel members shall be included. This information shall be included on the initial page and/or cover, if any, immediately below the case number. (New Rule 7/1/2000, rev. 7-1-2006)

CIRCUIT RULE 28-6

CITATION OF SUPPLEMENTAL AUTHORITIES

The body of letters filed pursuant to Federal Rule of Appellate Procedure 28(j) shall not exceed two (2) pages, unless it complies with the alternative length limitations of 350 words or 39 lines of text. Litigants shall submit an original and four (4) copies of a Fed. R. App. P. 28(j) letter. (New, 12-1-02)

Cross-reference: Circuit Rule 25-4, Calendared Cases (New 7-1-06)

CIRCUIT RULE 39-1

COSTS AND ATTORNEYS FEES ON APPEAL

39-1.7 Opposition to Request for Attorneys Fees

Any party from whom attorneys fees are requested may file an objection to the request. The party seeking fees may file a reply to the objection. The time periods set forth in Federal Rule of Appellate Procedure 27(a)(3)(A) and (4) for responses and replies to motions govern the intervals for filing an objection to the request and reply to an objection. (Last sentence new 7-1-2006)

CIRCUIT RULE 40-1

FORMAT; NUMBER OF COPIES

[Previous text abrogated 1/1/99]

(a) **Format/Length of Petition and Answer**

* * * *

(b) **Number of Copies**

* * * *

(c) **Copy of Panel Decision**

The petition for panel or en banc rehearing shall be accompanied by a copy of the panel's order, memorandum disposition or opinion being challenged. *(New 7-1-06)*